

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATLANTIC RECORDING CORPORATION

Plaintiff,

- v -

BCD MUSIC GROUP, INC. and
MIXTRAP, LLC,

Defendants.

____ Civ. ____

DECLARATION OF ANTHONY
RICIGLIANO IN SUPPORT OF
PRELIMINARY INJUNCTION

Anthony Ricigliano declares:

1. I am the principal of Donato Music Services, Inc. and a professional musicologist. I have been qualified to testify as an expert musicologist in numerous lawsuits. A true and correct copy of my resume, including a list of lawsuits in which I have testified as an expert witness, is attached as Exhibit A.
2. I have been retained by the law firm of Blank Rome LLP and Atlantic Recording Corporation ("Atlantic") to analyze certain recordings and compare them to recordings that are embodied on albums previously released by Atlantic. The purpose of this examination and analysis is to offer my professional opinion as to the extent, if any, of the similarity between the sound recordings with regard to possible copyright infringement.
3. After listening to and comparing the sound recordings and musical transcriptions, I completed a musicological analysis of these recordings and prepared the following conclusions.

**"Freaky Gurl Remix" (Back To The Traphouse Track 01)
vs. "Freaky Girl" (No Pad No Pencil Track 16)**

4. As part of my analysis, I compared "Freaky Gurl Remix" as embodied on Atlantic's album *Back To The Traphouse* (Track 01) with "Freaky Girl" as embodied on defendant BCD Music Group, Inc.'s ("BCD") album *No Pad No Pencil* (Track 16). There is no question that BCD's "Freaky Girl" is a copy of plaintiff Atlantic's "Freaky Gurl Remix," though portions of the recording of "Freaky Girl" have been reorganized and material has been added and material deleted. Furthermore, the portions of the recording (as well as the musical composition) copied by defendant constitute protectable musical/lyrical expression.

5. I note that several tracks on the album *No Pad No Pencil* contain a voiceover stating: "So Icy Entertainment, Atlantic Records, the official mix tape before *Back to the Trap House*," and variations thereof.

**Recordings from Atlantic's *The Real Testament*
vs. Recordings on Mixtrap's *Definition of Real***

6. The four recordings from Atlantic's album *The Real Testament* titled:

- i) "Shawty (Track 8),
- ii) "You" (Track 12),
- iii) "Hypnotized" (Track 14), and
- iv) "Murkin Season" (Track 15)

have been copied almost entirely on the Mixtrap album *Definition of Real* and listed, respectively, as:

- i) Track 24 ("Shawty Remix"),
- ii) Track 9 ("You"),
- iii) Track 10 ("Hypnotized"), and
- iv) Track 13 ("Murkin Season").

Recordings from Atlantic's *The Real Testament*
vs. Recordings on BCD's *Real Definitions*

7. As part of my analysis, I listened to defendant BCD's album *Real Definitions* as well as Atlantic's album *The Real Testament* by Al Gernod L. Washington, p/k/a Plies ("Plies"). I compared the artist's voice on both albums and conclude that BCD's album *Real Definitions* contains recordings by Plies.

"Bust it Baby Part 1" on upcoming Atlantic album *Definition of Real*
vs. "Buss it Baby" (*Definition of Real* track 2)

8. I was provided with a copy of the recording "Bust it Baby Part 1" that is on a special version of the upcoming Atlantic release *Definition of Real* and determined that "Buss it Baby" on Mixtup's *Definition of Real* is an exact copy of that recording.

I declare under penalty of perjury that the foregoing is true and correct.

Scarsdale, New York
June 4, 2008


Anthony Ricigliano

Exhibit A

ANTHONY RICIGLIANO

President, Donato Music Services, Inc.

Mr. Ricigliano has prepared musical analyses and assisted in the preparation of court cases for numerous legal firms and has testified on behalf of recording companies, music publishers, recording artists and composers, motion picture companies and advertising agencies in a variety of musical copyright disputes.

Mr. Ricigliano taught at the Manhattan School of Music for 31 years and held the post of Chairman of the Theory Department from 1979 until his retirement in May 2000. He has a Master of Music degree from the Manhattan School of Music and has also taught in various public and private schools as well as at the Juilliard School of Music.

In addition, he has authored two books on contemporary music: *Popular and Jazz Harmony and Melody and Harmony In Contemporary Songwriting*.

The cases for which he has testified in court as an expert witness are:

For the Defendant:

- (1980) *Soul On Your Side v. Disco Nights* (Arista records)
- (1988) *Just Another Night* (Patrick Alley) v. *Just Another Night* (Mick Jagger)
- (1991) *Es v. Hey* (Julio Iglesias/Sony Music Entertainment, Inc.)
- (1991) *Somebody, You & Me* (Thompson, et al.) v. *Stuck On You, Deep River Woman, & SeLa* (Lionel Richie, et al.)
- (1992) *I'll Be Your Everything* (G. Soule/Northside Partners) v. *I'll Be Your Everything* (J. Knight, D. Wood, ["New Kids On The Block"], T. Page/ Warner Bros. Records)
- (1993-4) *Run On Manchild, What Will Become Of The Children, Happy Go Lucky Girl*, v. *Thriller, We Are The World, Girl Is Mine* (Michael Jackson, Lionel Richie, Rod Temperton & Quincy Jones)
- (1994) *Dangerous v. Dangerous* (Michael Jackson)
- (1994) *Love Is A Wonderful Thing* (Isley Brothers) v. *Love Is A Wonderful Thing* (Michael Bolton & Andy Goldmark)
- (1995) *Movin' On v. Keep On Movin'* (Soul II Soul/Jazzie B)
- (1996) *I Cigni di Balaka v. Will You Be There* (Michael Jackson) in Rome, Italy
- (2007) *Atomic Dog v. D.O.G. In Me* (Public Announcement)

For the Plaintiff:

- (1987) *Pour Toi* (Gaste) v. *Feelings* (Kaiserman)
- (1988) *You Can't Always Get What You Want* (ABKCO Music) v. *Volvo* (Scali McCabe)

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Mr. Ricigliano has worked on copyright claims/issues representing other recording artists or groups including: Gloria Estefan, Madonna, Mariah Carey, Prince, Kiss, Led Zeppelin, ZZ Top, Sting, Bob Dylan, Kenneth "Babyface" Edmonds, Billy Joel, Hammer, Orville "Shaggy" Burrell, R. Kelly, The Rolling Stones, Aerosmith, Guns & Roses, Deana Carter, Mystikal, Alanis Morissette, Stevie Wonder, Limp Bizkit, Kid Rock, Gwen Stefani, Marshall Mathers (Eminem), Lenny Kravitz, Green Day, Destiny's Child (Beyoncé), Hillary Duff, Alicia Keys, Ja Rule, Avril Lavigne, Nelly Furdato, etc.

Recent Depositions (for defendants')

In December 2006, Mr. Ricigliano was deposed in the Chafir v. Carey, et al. involving the compositions *Sexy* by Rachele Chafir and *It's Like That* by Mariah Carey, Jermaine Dupri, et al. (summary judgement granted to defendants' in September 2007)

In February 2004 Mr. Ricigliano was deposed in Caragol v. Jackson et al. involving the compositions *The Village Grist Mill* by Gary Gerth, Ted Caragol and Dona Caragol and the composition *Doesn't Really Matter* by James Harris III, Terry Lewis and Janet Jackson.

In November 2003 Mr. Ricigliano was deposed in Lil'Joe Wein Music, Inc., and Lil' Joe Records, Inc., v. Strictly Rhythm Records, Inc., d/b/a/ Astral Werks Records, Inc., and d/b/a/ Skint Records, Sony Music Entertainment, Inc., Columbia Pictures Industries, Inc., Universal Music Publishing, Inc., and Columbia Tri-star Home entertainment, Inc., United States District Court Southern District of Florida concerning the compositions *Shake Whatch' Mama Gave Ya'* by Poison Clan v. *Shake Whatcha' Mama Gave Ya'* by Stik-E and the Hoods and *Ya Mama* by Fat Boy Slim.

In April 2003 Mr. Ricigliano was deposed in Cottrill and Wnokowski v. Britney Spears, Zomba, Jive Records, Wright Entertainment and BMG Music Publishing Civil Action No. 02 CV 3646. United States District Court Eastern District of Pennsylvania concerning the compositions *What You See Is What You Get* v. *What U See (Is What U Gef)* and *Can't Make You Love Me*.

In August 2002 Mr. Ricigliano was deposed in Cooper v. Sony Music Entertainment, et al., Civil Action No. 01-0941, Southern District of Texas concerning the compositions *Boys Night Out* and *Bounce With Me* (by Jermaine Dupre et al.).

In January 1999 Mr. Ricigliano was deposed in Darryl Lemon, a.k.a. D'Maurice, Plaintiff (*Never Live Without Your Love*) v. Prince Roger Nelson, a.k.a. The Artist Formerly Known As Prince, et. al (*I Hate You*). Case NO C97-1330C United States District Court Western District of Washington at Seattle.

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A partial list of clients that have used the services of Donato include:

ABKCO Music Inc.
Atlantic Record Corp.
BBDO
Bender & Frankel
BMG Music Publishing, Inc.
Chiat/Day Inc.
Cooley Manion Jones (Boston)
Cowan, Liebowitz & Latman
Elias Associates (New York, Los Angeles)
EMI Music Publishing (New York)
Foote Cone Belding (New York, San Francisco)
Greenberg Glusker Fields Claman Machtinger & Kinsella
Katz & Cherry (Atlanta)
Leo Burnett (Chicago)
Manatt, Phelps & Phillips
McCann-Erickson (New York and Detroit)
Mitchell Silberberg & Knupp (Los Angeles)
Ogilvy & Mather (New York and Los Angeles)
Parcher, & Hayes
Proskauer Rose
Pryor, Cashman, Sherman & Flynn
Richards & O'Neil
Rosenfeld, Meyer & Susman (Los Angeles)
Rudin, Appel & Rosenfeld (Los Angeles)
Sony Music Entertainment, Inc.
Universal Music Group (New York, Los Angeles)
Warner/Chappell (Los Angeles)
Weil, Gotshal & Manges
Wells, Rich & Greene
White O'Connor Curry & Avanzado
Young & Rubicam (New York and Los Angeles)
Zomba Music Publishing Group